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TITLE 760 DEPARTMENT OF INSURANCE

LSA Document #01-8(F)

DIGEST

Adds 760 IAC 1-66 regarding standards and procedures for an institutional investor to obtain the commissioner's approval to acquire beneficial ownership of five percent (5%) or more but less than ten percent (10%) of the outstanding shares of any class of a voting security of a former mutual insurance company or former mutual insurance company's parent company. Effective 30 days after filing with the secretary of state.

760 IAC 1-66

SECTION 1. 760 IAC 1-66 IS ADDED TO READ AS FOLLOWS:

Rule 66. Acquisition of Shares of Former Mutual Insurance Company by Institutional Investor

760 IAC 1-66-1 Applicability and scope

Authority: IC 27-15-13-2

Affected: IC 27-15-13-2

Sec. 1. (a) This rule is intended to provide a procedure under which an institutional investor may acquire beneficial ownership of five percent (5%) or more, but less than ten percent (10%) of the outstanding shares of any class of a voting security of a former mutual or any parent company, in a manner considered to have been approved by the commissioner under IC 27-15-13-2.

(b) This rule applies to acquisitions of shares by institutional investors that are not affiliates of the former mutual or parent company and that are acting in the ordinary course of business and not with the purpose or effect of changing or influencing the control, management, or policies of the former mutual or parent company. (*Department of Insurance; 760 IAC 1-66-1; filed Aug 3, 2001, 4:38 p.m.: 24 IR 3985*)

760 IAC 1-66-2 Definitions

Authority: IC 27-15-13-2

Affected: IC 27-1-2-3; IC 27-1-23-1; IC 27-15-1; IC 27-15-13-1

Sec. 2. The definitions set forth in IC 27-1-2-3, IC 27-1-23-1, and IC 27-15-1 and the following definitions apply throughout this rule:

- (1) "Conversion" means the conversion of a former mutual company pursuant to a plan of conversion.
- (2) "Executive officer" means any individual charged with active management and control in an executive capacity, including a president, vice president, treasurer, secretary, controller, or any other individual performing functions corresponding to those performed by the foregoing officers, of a person whether incorporated or unincorporated.
- (3) "Institutional investor" means any of the following, whether acting for its own account or the accounts of other institutional investors:
 - (A) A depository institution, including a bank, federal savings bank, savings and loan association, or trust company, regulated and supervised under the laws of the United States or any state.
 - (B) An insurance company.
 - (C) A separate account of an insurance company.
 - (D) An investment company registered under the federal "Investment Company Act of 1940", 15 U.S.C. § § 80a-1 et seq.
 - (E) A business development company as defined in the federal "Investment Company Act of 1940", 15 U.S.C. § 80a-2(48).
 - (F) Any private business development company as defined in the federal "Investment Advisers Act of 1940", 15 U.S.C.

§ 80b-2(22).

(G) An employee pension, profit-sharing, or benefit plan if the plan has total assets in excess of twenty-five million dollars (\$25,000,000) or its investment decisions are made by a named fiduciary, as defined in the federal "Employee Retirement Income Security Act of 1974", 29 U.S.C. § 1002(21), that is a broker-dealer registered under the federal "Securities Exchange Act of 1934", 15 U.S.C. § 78o, an investment adviser registered or exempt from registration under the federal "Investment Advisers Act of 1940", 15 U.S.C. § 80b-3, a depository institution, or an insurance company.

(H) An entity, but not an individual, a substantial part of whose business activities consist of investing, purchasing, selling, or trading in securities of more than one (1) issuer and not of its own issue and that has total assets in excess of fifty million dollars (\$50,000,000) as of the end of its latest fiscal year and in the aggregate owns and invests on a discretionary basis at least ten million dollars (\$10,000,000) of securities of issuers with which it is not affiliated.

(I) A small business investment company licensed under the federal "Small Business Investment Act of 1958", 15 U.S.C. § 681.

(J) Any other qualified institutional buyer as defined in Rule 144A(a)(1) of the Securities and Exchange Commission or any successor regulation.

The term shall not include the former mutual company, any parent company, or any employee benefit plan or trusts sponsored by the former mutual or a parent company where no approval under IC 27-15-13-1 is required.

(Department of Insurance; 760 IAC 1-66-2; filed Aug 3, 2001, 4:38 p.m.: 24 IR 3985)

760 IAC 1-66-3 General requirements

Authority: IC 27-15-13-2

Affected: IC 27-15-13

Sec. 3. (a) Not less than ten (10) business days, or such shorter time period as the commissioner may permit, prior to an institutional investor directly or indirectly acquiring, or agreeing or offering to acquire in any manner the beneficial ownership of five percent (5%) or more but less than ten percent (10%) of the outstanding shares of any class of a voting security of the former mutual or any parent company within five (5) years of the effective date of a conversion, the following certificates and documents shall be filed with the commissioner:

(1) A certificate, signed by the president and the secretary or other executive officers of the former mutual company and any parent company, in the form provided in section 6 of this rule.

(2) A certificate, signed by two (2) executive officers of the institutional investor, in the form provided in section 7 of this rule.

(3) Copies of any filings made or received by the former mutual company, parent company, or institutional investor with the Securities and Exchange Commission relating to the proposed acquisition of the shares.

(4) A copy of any agreement by the institutional investor or any affiliate thereof and the parent company, former mutual company, or any affiliate thereof concerning the shares or the voting thereof.

(b) Each certificate shall be signed and dated within ten (10) business days prior to the filing. The certificates shall be attached and submitted by the former mutual company as a single filing along with a cover letter explaining the purpose of the filing.

(c) The former mutual company shall file one (1) originally signed copy and two (2) photocopies of the certificates, other documents, and cover letter. The filing shall be made by personal delivery or first class mail addressed to: Department of Insurance, Attention: Chief Examiner, 311 West Washington Street, Suite 300, Indianapolis, Indiana 46204. *(Department of Insurance; 760 IAC 1-66-3; filed Aug 3, 2001, 4:38 p.m.: 24 IR 3986)*

760 IAC 1-66-4 Review of filings

Authority: IC 27-15-13-2

Affected: IC 27-1-23-2; IC 27-15-13

Sec. 4. (a) A filing made by a former mutual company in accordance with section 3 of this rule shall be deemed approved by the commissioner as of the date the department receives the filing.

(b) The commissioner may review filings made under this rule at any time within thirty (30) days after receipt and may issue a written request for a former mutual company, parent company, or institutional investor to provide any additional information that may be appropriate to complete such review. The commissioner may, at the same time, order the

institutional investor to refrain from purchasing any shares that, together with shares already beneficially owned by the institutional investor, would give the institutional investor ownership of five percent (5%) or more of the outstanding shares of any class of voting securities of the former mutual or parent company. The order shall remain in effect until the earliest of the following:

- (1) Sixty (60) days following the date the commissioner received the filing.
- (2) The date the commissioner makes a determination under subsection (c).
- (3) The date the commissioner otherwise provides the former mutual company and the institutional investor with a written approval for the acquisition of shares to resume.

(c) The commissioner may disapprove any acquisition of shares made or to be made under this rule only after furnishing the former mutual company, parent company, and institutional investor with notice and an opportunity to comment or object within thirty (30) days after the commissioner's receipt of the filing made by the former mutual company. The commissioner may disapprove any acquisition of shares if the commissioner finds any of the following:

- (1) The filing is or was preceded by any filing that was false, omitted material facts, was materially deficient, or otherwise does not comply with the requirements of section 3 of this rule.
- (2) Would not satisfy the requirements of IC 27-1-23-2(e).
- (3) Would frustrate the plan of conversion or the amendment to the articles of incorporation as approved by the members of the former mutual company and the commissioner.
- (4) Was not approved by the boards of directors of the former mutual company and any parent company.
- (5) Would not be in the best interest of the policyholders of the former mutual company, without regard to any interest of policyholders as shareholders of the former mutual company or any parent company.

(d) If the commissioner disapproves an acquisition of shares made or to be made under this rule, the institutional investor may not, after the date of the disapproval, acquire any shares that, together with shares already beneficially owned by the institutional investor, would give the institutional investor five percent (5%) or more of the outstanding shares of any class of voting securities of the former mutual or parent company. The commissioner shall provide written notice of disapproval, including the reason for disapproval to the former mutual company, parent company, and institutional investor promptly after the finding of disapproval. The commissioner may also order the institutional investor to divest itself of all shares of the former mutual company or parent company that equal or exceed five percent (5%) of the shares of any class of voting securities of the former mutual company or parent company. The institutional investor must complete the divestiture within sixty (60) days after the commissioner's order to divest unless the commissioner specifies a longer period of time. (*Department of Insurance; 760 IAC 1-66-4; filed Aug 3, 2001, 4:38 p.m.: 24 IR 3986*)

760 IAC 1-66-5 Additional powers of commissioner; prohibition from use of rule based on change in investor's certificate

Authority: IC 27-15-13-2

Affected: IC 27-1-23

Sec. 5. (a) Nothing in this rule shall prevent the commissioner from taking any action necessary for the protection of the policyholders of the former mutual company upon the commissioner's receipt of a notice of any change in the matters certified as required by IC 27-15-13-2(b)(2)(C).

(b) An institutional investor that files a notice described in subsection (a) may make no further acquisitions of shares under this rule if any change reported in such notice would:

- (1) make the institutional investor ineligible to use this rule to acquire shares;
- (2) require approval under IC 27-1-23; or
- (3) otherwise cause the commissioner to disapprove an acquisition of shares.

(*Department of Insurance; 760 IAC 1-66-5; filed Aug 3, 2001, 4:38 p.m.: 24 IR 3987*)

760 IAC 1-66-6 Certificate of officers of former mutual and parent company

Authority: IC 27-15-13-2

Affected: IC 27-15

Sec. 6. The certificate required under section 3 of this rule from the officers of the former mutual company and any parent company shall be in the following form:

OFFICERS' CERTIFICATE

**Regarding the Proposed Acquisition of Shares of the
Voting Securities of a Former Mutual Insurance
Company or Parent Company**

**Filed with the
INDIANA INSURANCE COMMISSIONER
By**

**[Name of Former Mutual Company and any
Parent Company]**

**A Former Mutual Insurance Company
[and Parent Company]
Filing in Support of the Acquisition
of 5% or more, but less than 10% of Shares by**

[Name of Institutional Investor],

**an Institutional Investor under 760 IAC 1-66-2
organized in the State of _____**

On its [their] Own Behalf

**Name, title, address, and telephone number
of individuals to whom notices and correspondence
concerning this Certificate should be addressed:**

Officers' Certificate

We, [names of President and Secretary of former mutual or other executive officers], as the [titles of executive officers], respectively, of [insert name of former mutual company], an Indiana stock insurance company duly converted from its previous form as a mutual insurance company in accordance with IC 27-15, and [insert names of parent company's executive officers, if applicable] as the [titles of executive officers], respectively, of [insert name of parent company], the parent company of [former mutual company], hereby certify as follows in accordance with 760 IAC 1-66-3.

1. [Institutional investor] organized under the laws of the State of _____, proposes to acquire beneficial ownership of 5% or more, but less than 10% of the shares of the [insert information on class of shares, [if any] shares of the voting securities of [former mutual or parent company], a former mutual insurance company [or parent company].
2. [Institutional investor] is not an "affiliate", as such term is defined in IC 27-1-23-1(b), of [former mutual company] or [parent company], and to the best of our knowledge, is acquiring the shares in the ordinary course of its business and is not acquiring those shares with the purpose or effect of changing or influencing the control, management, or policies of [former mutual company] or [any parent company]. The proposed purchase of shares would not cause or attempt to cause the substantial lessening of competition in any insurance market in the State of Indiana.
3. The boards of directors of [former mutual company] and [parent company] have approved such acquisition of shares by [institutional investor] or similar investors at meetings duly called and held on [date of meeting of former mutual company's board] and [date of meeting of parent company's board], respectively.

IN WITNESS WHEREOF, we have executed this Certificate this [date] of [month], [year].

[Name], [Title]
[Name of former mutual]

[Name], [Title]
[Name of former mutual]

[Name], [Title]
[Name of parent company]

[Name], [Title]
[Name of parent company]

(Department of Insurance; 760 IAC 1-66-6; filed Aug 3, 2001, 4:38 p.m.: 24 IR 3987)

760 IAC 1-66-7 Certificate of executive officers of institutional investor

Authority: IC 27-15-13-2

Affected: IC 27-1-23-1

Sec. 7. The certificate required under section 3 of this rule from the officers of an institutional investor shall be in the following form:

OFFICERS' CERTIFICATE

**Regarding the Proposed Acquisition of Shares
of the Voting Securities of a Former Mutual
Insurance Company or Parent Company**

**Filed with the
INDIANA INSURANCE COMMISSIONER
By**

[Name of Institutional Investor]

**An Institutional Investor under 760 IAC 1-66-2
organized in the State of _____, who proposed to
Acquire Beneficial Ownership of 5% or more,
but less than 10% of the Shares of**

[Name of Former Mutual Company],

**an Indiana former mutual insurance company
[insert name and description of parent
company, if applicable]**

On its [their] Own Behalf

**Name, title, address, and telephone number
of individuals to whom notices and correspondence
concerning this Certificate should be addressed:**

Officers' Certificate

We, [names of two executive officers of institutional investor], as the [titles of executive officers], respectively, of [insert name of institutional investor], organized in the State of _____, hereby certify as follows in accordance with 760 IAC 1-66-3:

1. [Institutional investor] is an "institutional investor," as such term is defined in 760 IAC 1-66-2.
2. [Institutional investor] proposes to acquire beneficial ownership of 5% or more, but less than 10%, of the [insert information on class of shares, if any] shares of the voting securities of [former mutual or parent company whose shares are being acquired], an Indiana former mutual insurance company [or parent company].
3. [Institutional investor] will acquire such shares in the ordinary course of its business and not with the purpose or the effect of changing or influencing the control, management, or policies of [insert name of company whose shares are being acquired]. The proposed purchase of shares is solely for investment purposes and would not cause or attempt to cause the substantially lessening of competition in any insurance market in the State of Indiana.
4. [Institutional investor] is not an affiliate, as such term is defined in IC 27-1-23-1(b), of [former mutual company] or [parent company].
5. [Institutional investor] agrees to notify the Indiana Insurance Commissioner ("Commissioner"), [former mutual company] and [parent company] in writing not less than twenty (20) business days before any change in the matters herein certified, and comply with any actions required by the Commissioner as a result of such change.
6. [Institutional investor] understands that this Certificate is part of a filing, required by 760 IAC 1-66-3, that is deemed approved by the Commissioner upon receipt by the Commissioner. However, [institutional investor] also understands that the Commissioner may, in accordance with 760 IAC 1-66-4, prohibit [institutional investor] from purchasing, or require that [institutional investor] divest itself of, shares that represent five percent (5%) or more of the shares of [former mutual or parent company]. [Institutional investor] agrees to comply with any orders issued by the Commissioner under applicable law or regulation.

IN WITNESS WHEREOF, we have executed this Certificate this [date] of [month], [year].

[Name], [Title]
[Name of institutional investor]

[Name], [Title]
[Name of institutional investor]

(Department of Insurance; 760 IAC 1-66-7; filed Aug 3, 2001, 4:38 p.m.: 24 IR 3988)

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Incorporated Documents Filed with Secretary of State: None